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November 13, 2002

Mr. Michael Ribordy
Remedial Project Manager
U.S. Environmental Protection Agency
77 West Jackson Blvd. - SR-6J
Chicago, Illinois 60604-3590

Mr. William Muno
Director, Superfund Division
U.S. Environmental Protection Agency
77 West Jackson Blvd.
Chicago, Illinois 60604-3590



**Re: STATEMENT OF SUFFICIENT CAUSE DEFENSE UNDER SECTION
106(B)(2) OF THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION AND RECOVERY ACT ("CERCLA")**

Gentlemen:

This letter is submitted on behalf of Union Electric Company d/b/a AmerenUE (hereinafter, "UE" or "the Company") in response to the Unilateral Administrative Order ("UAO") and Record of Decision ("ROD") issued by the United States Environmental Protection Agency ("U.S. EPA") as of October 16, 2002. U.S. EPA issued the UAO to approximately 76 potentially responsible parties ("PRPs") and has ordered those PRPs to implement an interim groundwater remedy by constructing a barrier wall on property owned by Solutia, Inc. ("Solutia"), corporate successor to Monsanto Company. It is the Company's understanding that Solutia intends to comply with the UAO.

In undertaking this response, UE expressly (i) denies liability regarding this matter and (ii) reserves all rights and defenses that are now or may be hereafter available to it in responding to the Sauget Superfund sites in general or this Order in particular. UE further reserves the right to raise any and all defenses available to it at any time, including but not limited to any such time as U.S. EPA seeks enforcement of the Order. With the additional understanding that UE is not required to set forth all of its defenses at this time, UE objects to the issuance of the UAO and asserts a "sufficient cause" defense as permitted by Section 106(b)(2) of CERCLA. As we discussed with you in a phone conversation that occurred on October 23, 2002, the Company requests a meeting with U.S. EPA at which time the Company will present technical and factual support for the positions outlined in this response.

I. RELEVANT BACKGROUND

The issuance of both the UAO and the ROD apparently follows U.S. EPA's review of environmental studies conducted by Solutia of its W. G. Krummrich Facility and Site R, its former chemical landfill. These two sites, along with a parcel of property immediately to the east of Site R known as the "Dog Leg" of Site Q, are considered by U.S. EPA to be the primary sources of certain contaminants of concern ("COCs") which the agency alleges to be causing or threatening to cause ecological impacts found within the Mississippi River.

U.S. EPA's proposed "interim remedy" calls for the construction of a 3,500 foot-long barrier wall around the northern, southern and western boundaries of Site R and the installation of recovery wells inside the wall structure. "This limited-scope action is intended only to address the release of contaminated groundwater into the Mississippi River in the vicinity of the OU" (*Section VII, Work To Be Performed*). The UAO defines the operable unit ("OU") to be "the groundwater contamination releases to the Mississippi River adjacent to Sauget Area 2 disposal Site R and the resulting impact area" (*Section III, Definitions*). According to the UAO, "the impact area is confined to an area approximately 2000 feet long (coinciding with the northern and southern boundaries of Site R) and approximately 300 feet from shore" (*Section IV, Determinations*). U.S. EPA contends that a series of disposal sites and/or active facilities are upgradient of the OU and could be contributing to the groundwater contamination (*Section IV, Determinations*). These various sites include Site R, Site O, Site Q (Dog Leg), Clayton Chemical, Site I, the W. G. Krummrich Plant. Site P and the majority of Site Q and are not subject to the UAO. In reality, the interim remedy is designed to contain and cordon-off tons of contaminated source material disposed of in Site R property owned and operated exclusively by Solutia.

As U.S. EPA is well aware, UE has joined with nine other PRPs (the Sauget Area 2 Sites Group) to perform a remedial investigation and feasibility study with respect to five disposal sites (Sites O, P, Q, R, and S) that have been aggregated by the agency and referred to collectively as Sauget Area 2.¹ That work is being performed under the terms of an Administrative Order on Consent ("AOC") issued pursuant to Section 122 of CERCLA. The Statement of Work accompanying the AOC requires extensive soil and groundwater evaluation of all of the disposal sites as well as river sediment adjacent to

¹ On September 13, 2001, U.S. EPA proposed listing Sauget Area 2 on the National Priorities List (NPL). 66 Fed. Reg. 47,618. On December 13, 2001, UE filed comments objecting to the proposed NPL listing and U.S. EPA's attempt to aggregate the disparate and distinct disposal sites.

some of the sites. Most of the field work and river sampling have been completed and the Sauget Area 2 Sites Group anticipates submitting a draft RI/FS and related reports to the agency in 2004.

II. UE IS NOT A RESPONSIBLE PARTY UNDER CERCLA FOR THE OPERABLE UNIT GROUNDWATER CONTAMINATION

U.S. EPA identifies UE as being an "owner or operator" under CERCLA and as such, "potentially responsible for contributing hazardous substances to the Sauget Area 2 Site Groundwater OU." Such contentions are incorrect. UE has never owned any of the specific sites identified by the UAO and the Company's operations have not contributed to groundwater contamination at the OU or the Mississippi River. None of the Company's operations elsewhere in the vicinity of Area 2 involved any COC alleged in the Order as causing the need for an interim remedy.

The Company's operations within Area 2 were, and are, quite limited. The Company holds easements on portions of Site R and the Dog Leg of Site Q upon which transmission towers and overhead lines are located. These facilities do not involve the use of any hazardous substances. The mere holding of such property rights is insufficient to confer CERCLA liability. See Long Beach Unified School District v. Dorothy B. Godwin California Living Trust, 32 F.3d 1364 (9th Cir. 1994)

In connection with the operation of its former Cahokia Power Plant, located in the general vicinity of Area 2, UE operated surface impoundments for the treatment of fly ash immediately adjacent to the Mississippi River. An analysis of historical aerial photographs of the region indicates that the Company's former ash ponds were not located on what is now known as Site R, or the "Dog Leg" of Site Q. In fact, such photographs reflect that, to the extent Sauget & Company conducted landfill operations within Site Q as alleged by U.S. EPA in the Area 2 AOC, such activities occurred to the east and south of the former ash ponds.²

Groundwater sampling taken by U.S. EPA and Solutia apparently reflects "significant concentrations" of volatile organic compounds (VOCs) and semi-

² Such photographs also reflect that the physical operations of Site R and the Dog Leg were virtually indistinguishable. Contracts between Monsanto Company, Industrial Salvage, Sauget & Company, and landfill operating procedures developed by Monsanto confirm as much. The Area 2 RI/FS should confirm that the contaminants found within the Dog Leg are identical to that found within Site R.

volatile organic compounds (SVOCs) at locations which correspond to the boundaries of Site R. The characteristics of fly ash have been studied by both U.S. EPA and the utility industry. None of the organic compounds identified in the UAO are associated with fly ash. Accordingly, there is no basis for U.S. EPA to order the Company to participate in the implementation of a remedy designed to prevent those organic compounds from impacting the river.

III. THE ORDER IS ARBITRARY AND CAPRICIOUS

U.S. EPA apparently decided not to use the settlement procedures set forth in Section 122 of CERCLA for two primary reasons. First, the agency desires to expedite implementation of the interim remedy. Second, Solutia has already indicated its willingness to implement the remedy.³ Given the foregoing, U.S. EPA's issuance of the UAO under Section 106 of CERCLA to approximately 76 parties who, like UE, may not be responsible for the OU groundwater contamination is unlawful, arbitrary and capricious, and inconsistent with the National Contingency Plan ("NCP").

The NCP allows U.S. EPA to pursue either a removal action or a remedial action – not an undefined hybrid that has emerged in this case. The parties to the Area 2 AOC already are pursuing an RI/FS in accordance with the NCP. Given the \$26 million estimated price, the lack of an EECA study, and the lack of public health exigency (as evidenced by the fact that U.S. EPA has been aware of organic compounds leading into the river from Site R since at least the mid-1980s), there is no basis for an emergency removal action under CERCLA. U.S. EPA's "interim remedy" fits none of the CERCLA-authorized response options and is, therefore, unlawful.

Neither U.S. EPA nor Solutia has attempted to delineate the specific and discrete groundwater impact from each of the disposal sites identified in the UAO. The only relevant groundwater and soil data exists only with respect to Site R and the W. G. Krummrich facility. Rather, such impact from other sources has been assumed based upon groundwater modeling conducted by Solutia, the primary PRP for both Sauget Area 1 and Sauget Area 2. (A copy of a slide prepared by Solutia that purportedly depicts the "Groundwater Capture Zone" for the OU is attached.) The Area 2 RI/FS will provide necessary data as to the specific groundwater conditions at all of the Area 2 disposal sites. As U.S. EPA acknowledged in the November 5, 2002 conference call discussing implementation of the UAO, completion of the RI/FS

³ To the extent Solutia believes other parties bear financial responsibility for the interim remedy, it is certainly free to pursue, as it has done so in Area 1, the legal remedies afforded them under Section 113 of CERCLA.

is necessary to determine the effectiveness of the Interim Remedy and the specific contaminant drivers that give rise to the need for the remedy. Accordingly, U.S. EPA should have deferred selection of a groundwater remedy and the issuance of the ROD until Area 2 RI/FS is completed. This is particularly true given that the waste contaminants contained in Site R have been well known to state and federal environmental agencies for decades and the RI/FS is proceeding on schedule.

In addition to being inconsistent with the NCP, U.S. EPA's proposed "interim" response actions might prove to be inconsistent or incompatible with any remedy resulting from the ongoing RI/FS process. By picking an interim remedy before completing the process of evaluating remedial options, U.S. EPA has deprived the Company of the NCP's procedural safeguards and has not followed the mandated remedy selection procedures under CERCLA. CERCLA does not require the Company to participate in such an arbitrary and capricious remedy selection and implementation process, particularly when the Company already is participating with U.S. EPA in an NCP compliant remedy selection process which will achieve all appropriate environmental benefits.

U.S. EPA has made no effort to differentiate among a large class of PRPs in spite of a groundwater capture zone that appears to be geographically discrete. Solutia bears primary responsibility for virtually all of the disposal sites that allegedly contribute to the OU. Solutia owns and operates Site R and the W. G. Krummrich Plant. Solutia is the largest user of the Sauget wastewater treatment plant and its former waste lagoons (Site O).⁴ Sauget & Company operated landfills on Site R and the Dog Leg on behalf, or for the primary benefit, of Solutia. Moreover, as the government is well aware through its participation in U.S. v. Pharmacia litigation, Solutia is the primary generator of waste material at the Area 1 landfills. Under these circumstances, U.S. EPA's issuance of the broad-based UAO is inappropriate.

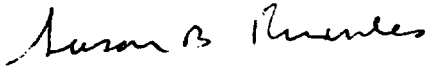
⁴ Upon information and belief, Solutia operates and effectively controls the Sauget POTW through the Sauget Sanitary Research Association, a not-for-profit organization created and dominated by Solutia.

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IV. CONCLUSION

In summary, the Company believes that the UAO is objectionable as to both substance and procedure. For the reasons set forth above, Union Electric Company formally requests that U.S. EPA amend its Order to delete the Company as a respondent.

Sincerely,



Susan B. Knowles
Associate General Counsel

SBK:mas
Enclosure

cc: Tom Martin, U.S. EPA